

Jeremy E. Roller, WSBA No. 32021
ARETE LAW GROUP PLLC
600 University Street, Suite 2420
Seattle, WA 98101
Phone: (206) 428-3250
Fax: (206) 428-3251
jroller@aretelaw.com

HON. FREDERICK P. CORBIT

Matthew Sava, Esq.*
Matthew J. Livingston, Esq.*
Zheng Gao, Esq.*
Reid & Wise LLC
One Penn Plaza, Suite 2015
New York, NY 10119
Phone: (212) 858-9982
msava@reidwise.com
mlivingston@reidwise.com
zgao@reidwise.com
*Admitted Pro Hac Vice

Attorneys for EB-5 Plaintiffs

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re

1 MIN, LLC; HOTEL AT SOUTHPORT,
LLC; and TWELFTH FLOOR, LLC,

Debtors.

Chapter 11

Lead Case No. 24-01519

(Jointly Administered)

Adv. Proc. No. 25-80007

LAN CAI, SHUIE CHEN, TIANRAN
CHEN, WEIJUN CHEN, JIE CHU,
ZHAOJUN CONG, HE CUI, JIANYING
DING, JICHUN DU, QING DU, JIEYING
FENG, YUPENG GAO, YIRAN HAN,
JINYANG HU, NAIXIN HU, XIAO HUANG,
JUNMEI JIN, XIN MENG, WEIHONG LU,
YUANYUAN MA, MIN PAN, LEI PEI, HAO
QI, XIAO RONG, JUAN SHAO, HUI

**PLAINTIFFS' MOTION
FOR PROTECTIVE
ORDER**

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER


ARÊTE LAW GROUP
600 University St, Suite 2420
Seattle, WA 98101
O: (206) 428-3250

1 WANG, JINGYI WANG, YUQUAN WANG,
2 ZIDONG WANG, RONGRONG WU,
3 ZHAOHUI XU, QI XU, JIE YAN, KE
4 YANG, QIN YANG, HONGYUN YU,
5 SHUXIAN ZENG, XIAOHONG ZHANG,
6 YING ZHAO, MINBO ZHOU, NAN ZHOU,
7 HUIQING ZHU, ZILING ZENG, LUYI
8 ZHANG, JUNDI LIANG, TAO LI, YUN CAI,
9 HONGLIANG TANG, JIE TANG,
10 WENLUNG CHEN, SHI ZHANG, JUN CHE,
11 DAHE ZHANG, SHAN WAN, XIAOHONG
12 SUN, YAN LYU A/K/A YAN LU, WENYAN
13 WANG, JIALIN TIAN, RUI TANG,
14 XINHAN LIN, SIYU LIU, JIANYING
15 MENG, PHUONG NGUYEN, YEQING PAN,
16 XUERONG QI, QIANG WANG, JUNLI
17 WEI, YUNFEI WU, HONGYING YU,
18 DONGLI ZHANG,

19 Plaintiffs,

20 v.

HOTEL AT SOUTHPORT, LLC, TWELFTH
FLOOR, LLC, 1 MIN, LLC.

Defendants,

and

WF CREL 2020 GRANTOR TRUST,

Intervenor-Defendant.

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER



ARÊTE LAW GROUP

600 University St, Suite 2420

Seattle, WA 98101

T: (206) 428-3250

PLEASE TAKE NOTICE that Plaintiffs by and through their undersigned counsel, Arete Law Group PLLC and Reid & Wise, LLC, hereby file this Motion for Entry of Protective Order and respectfully move this Court pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 26(c), made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure ("Fed. R. Bankr. P.") 7026, for entry of a protective order (1) providing that all depositions of Plaintiffs shall be conducted via remote video conference pursuant to Fed. R. Civ. P. 30(b)(4) and (2) limiting the total number of depositions of Plaintiffs in this case to ten (10). Movants seek protection from the undue burden and expense associated with the potential requirement that each Plaintiff, 44 of whom currently reside in China, physically travel to the State of Washington to sit for a deposition. For the reasons set forth herein, Plaintiffs respectfully request that the Court enter the proposed Protective Order attached hereto as Exhibit 1.

BACKGROUND

Plaintiffs refer the Court to the Complaint [Adv. ECF No. 1] and the Amended Joint Plan of Reorganization [Bankr. ECF No. 127] and Joint Disclosure Statement [Bankr. ECF No. 8] for the general background of these bankruptcy cases and this Adversary Proceeding.

1 There are seventy (70) individual Plaintiffs in this Adversary
2 Proceeding, forty-four (44) of whom currently reside in China. A summary of
3 the current country of residence of each Plaintiff is included as Exhibit 3 to the
4 *Declaration of Matthew J. Livingston in Support of Plaintiffs' Motion for*
5 *Protective Order* (the "Declaration"), filed in support of this Motion.

6 Defendants have served notices of deposition for each of the 70
7 Plaintiffs in this Adversary Proceeding, with each deposition noticed for the
8 week of May 12th – May 16th, 2025. The Notices of Deposition each list the
9 location of the deposition as "Seattle, Washington (exact location TBD)" and
10 Defendants have confirmed that they will not agree to any remote/video
11 depositions for any Plaintiff absent Court order, even for those Plaintiffs
12 currently located in China or any other country outside of the United States. A
13 copy of an example deposition notice of Plaintiff Dahe Zhang is attached as
14 Exhibit 1 to the Declaration. All deposition notices are substantively identical
15 to this deposition notice, other than the day of the deposition for each Plaintiff.
16 The different proposed deposition days are reflected in the summary table
17 attached as Exhibit 2 to the Declaration.

18 Defendants and Intervenors have confirmed to Plaintiffs that they
19 intend to move forward with 70 depositions over the course of five days, as
20 summarized in the summary table of all depositions included as Exhibit 2 to

1 the Declaration, with fourteen (14) depositions currently scheduled
2 simultaneously for each day of the week of May 12th, 2025.

3 Requiring Plaintiffs located in China to travel to the United States for
4 in-person depositions imposes an enormous and unnecessary financial and
5 logistical burden on each of the Plaintiffs, a burden which is unreasonable and
6 wholly disproportionate to any supposed benefit of in-person depositions for
7 Defendants and Intervenor. The viability of remote depositions in this matter
8 is further underscored by the fact that the subject of each deposition of each
9 Plaintiff is likely to be primarily focused on the Offering Documents issued to
10 each Plaintiff with respect to the Project, documents which can easily be
11 digitally shared during a remote deposition and which are all substantively
12 identical between Plaintiffs, other than the individual Plaintiff's signature.

13 Plaintiffs' counsel conferred with counsel for Defendants and Intervenor
14 on two separate occasions regarding these discovery issues in an attempt to
15 reach a resolution, as required by Fed. R. Civ. P. 26(c)(1). Unfortunately, the
16 parties were unable to agree on a procedure for remote depositions for the
17 China-based Plaintiffs or on a reasonable limitation on the total number of
18 Plaintiff depositions. Plaintiffs understand that Defendants and Intervenor
19 believe in-person depositions are required, notwithstanding the enormous
20 financial and logistical burden this imposes on Plaintiffs. As such, Plaintiffs

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

1 file this Motion seeking a protective order to (i) permit depositions of
2 Plaintiffs to be conducted remotely via video technology and (ii) limit the total
3 number of depositions of Plaintiffs to 10.

4 **ARGUMENT**

5 **I. Standard for Protective Order under Rule 26(c)**

6 Federal Rule of Civil Procedure 26(c)(1), applicable via Fed. R. Bankr.
7 P. 7026, permits a court, "for good cause," to issue an order "to protect a party
8 or person from annoyance, embarrassment, oppression, or undue burden or
9 expense." The rule provides a non-exhaustive list of potential protective
10 measures, including "specifying terms, including time and place or the
11 allocation of expenses, for the disclosure or discovery," Fed. R. Civ. P.
12 26(c)(1)(B), and "limiting the scope of disclosure or discovery to certain
13 matters," Fed. R. Civ. P. 26(c)(1)(D), or "limiting...the number...[of
14 depositions]" under the proportionality principles of Rule 26(b)(2)(C).

15 The party seeking the protective order bears the burden of showing
16 "good cause" by making "a particular and specific demonstration of fact, as
17 distinguished from stereotyped and conclusory statements." *See, e.g., Foltz v.*
18 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003) (internal
19 quotation marks omitted).

1 “Leave to permit remote depositions should generally be granted
2 liberally.” *Brower v. McDonald's Corp.*, No. 2:19-cv-02099-GMN-BNW,
3 2021 WL 3573633, at *2 (D. Nev. May 28, 2021). The Court's analysis
4 proceeds in two steps: “(1) the proponent must advance a legitimate reason for
5 seeking a remote deposition; and (2) if the movant articulates a legitimate
6 reason, then the burden shifts to the opposing party to make a particularized
7 showing that conducting the deposition by remote means would be
8 prejudicial.”

9 **II. Good Cause Exists to Permit Remote Depositions of Plaintiffs in**
10 **China**

11 **A. Undue Burden and Expense of In-Person Depositions**

12 As with deciding whether good cause exists to support a protective
13 order, courts have broad discretion in determining the time and place of
14 depositions. *See Hyde & Drath v. Baker*, 24 F.3d 1162, 1165 (9th Cir. 1994).
15 Courts within the Ninth Circuit have observed that leave to take depositions
16 remotely should be granted liberally. *See Pruco Life Ins. Co. v. Cal. Energy*
17 *Dev. Inc.*, 2021 WL 5043289, at *14 (S.D. Cal. 2021); *Lopez v. CIT Bank,*
18 *N.A.*, 2015 WL 10374104, at *2 (N.D. Cal. 2015). “[I]n the absence of
19 exceptional or unusual circumstances, when a deponent resides at a substantial
20 distance from the deposing party's residence, the deposing party should be

1 required to take the deposition at a location in the vicinity in which the
2 deponent resides, even if the deponent is a party.” *Metrex Research Corp. v.*
3 *United States*, 151 F.R.D. 122 (D. Colo. 1993).

4 Requiring Plaintiffs residing in China to travel internationally for
5 depositions presents extraordinary logistical challenges and prohibitive costs.
6 These include significant international airfare costs, potential visa
7 requirements, accommodation, and significant time commitments far
8 exceeding those for domestic depositions. This constitutes a classic example of
9 undue burden and expense justifying protection under Rule 26(c). Moreover,
10 given recent tensions between China and the United States, various Plaintiffs
11 are understandably extremely uneasy with the idea that they would have to
12 travel to the United States and be subject to United States customs and
13 immigrations issues, solely to sit for a deposition to discuss investment
14 documents that could easily be shared remotely via video technology.

15 Here, requiring at least 44 Plaintiffs to fly from China to the United
16 States and sit for a deposition in person, when a remote deposition would
17 accomplish exactly the same thing, is plainly unduly burdensome. There is no
18 substantive difference in a translated remote deposition and a translated in-
19 person deposition, other than the significant time, money and disruption for
20 each Plaintiff if required to travel to the United States on short notice.

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1 Defendants' request to require 70 in-person depositions is a plain attempt to
2 get certain Plaintiffs' to potentially withdraw their claims or otherwise
3 prejudice the strength of their claims because they are unable to incur this
4 additional expense and life-disruption, after already losing more than \$550,000
5 investing in this Project.

6 **B. Remote Depositions Are Explicitly Authorized and Feasible And**
7 **Particularly Appropriate In This Case**

8 Fed. R. Civ. P. 30(b)(4) expressly provides that "[t]he parties may
9 stipulate—or the court may on motion order—that a deposition be taken by
10 telephone or other remote means." Modern video conferencing technology
11 allows for effective remote depositions where counsel can assess witness
12 demeanor, share exhibits electronically, and have objections placed on the
13 record in real-time. Courts routinely authorize remote depositions and remote
14 depositions have been commonplace since the COVID-19 pandemic. *Swenson*
15 *v. GEICO Casualty Co.*, 336 F.R.D. 206, 209 (D. Nev. 2020); *Vargas v.*
16 *Evergreen Profl Recoveries Inc.*, No. 2:21-cv-00926-RSL-JRC, 2022 WL
17 856991 (W.D. Wash. Mar. 23, 2022).

18 **C. Lack of Undue Prejudice**

19 Allowing remote depositions will not unduly prejudice Defendants here.
20 They will still have the opportunity to question the witnesses under oath,

1 observe their demeanor via video, and create a complete record. Protocols can
2 be established to ensure the integrity of the process (e.g., witness
3 identification, agreements on exhibit handling, stipulations regarding the oath
4 administration).

5 In addition, the primary evidence at issue for each deposition will be the
6 Offering Documents relied upon by Plaintiffs in making each Plaintiff's
7 decision to invest in the Project. These documents are not in dispute and can
8 be easily verified and shared via remote means. Moreover, counsel to
9 Defendants will need to conduct depositions of Plaintiffs in a foreign language
10 and therefore any idea that counsel defendants will be able to assess credibility
11 significantly (or at all) better in person than via remote deposition is highly
12 speculative, given the fact that counsel and each deponent will not be speaking
13 the same language and will be communicating through a translator.

14 **III. Good Cause Exists to Limit the Total Number of Plaintiff Depositions**
15 **to Ten (10)**

16 **A. Federal Rule of Civil Procedure 30(a)(2)(A)(i), Made Applicable**
17 **By Federal Rule of Bankruptcy Procedure 7030, Presumptively**
18 **Limits Total Depositions Per Side to 10**

19 Federal Rule of Civil Procedure 30(a)(2)(A)(i), made applicable to
20 this Adversary Proceeding by Federal Rule of Bankruptcy Procedure Rule
7030, provides a presumptive limit of ten (10) depositions per side, absent

1 stipulation between the parties or leave of court. Fed. R. Civ. P. 30(a)(2)(A)(i);
2 Fed. R. Bankr. P. 7030. In considering whether to extend the limit under Rule
3 26(b)(2), “the Court will consider whether: (i) the discovery sought is
4 unreasonably cumulative or duplicative, or is obtainable from some other
5 source that is more convenient, less burdensome, or less expensive; (ii) the
6 party seeking discovery has had ample opportunity by discovery in the action
7 to obtain the information sought; or (iii) the burden or expense of the proposed
8 discovery outweighs its likely benefit, taking into account the needs of the
9 case, the amount in controversy, the parties' resources, the importance of the
10 issues at stake in the litigation, and the importance of the proposed discovery
11 in resolving the issues.” *Smith v. Ardew Wood Products, Ltd.*, 2008 WL
12 4837216 (W.D.Wash.2008). A party seeking to exceed the presumptive limit
13 bears the burden of making a “particularized showing” of the need for
14 additional depositions. *Id.*

15 Here, Plaintiffs submit that 70 depositions is plainly excessive and
16 vastly exceeds the presumptive limit of 10 depositions. While there are 70
17 plaintiffs, each plaintiff has substantively similar legal and factual issues and
18 there has been no showing by Defendants or Intervenors that 70 in-person
19 depositions are necessary in this case.
20

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Seattle, WA 98101

O: (206) 428-3250

1 **B. Undue Burden, Expense, and Proportionality**

2 Noticing or taking depositions of seventy (70) individual Plaintiffs
3 would constitute undue burden and expense and is grossly disproportionate to
4 the needs of this case under the factors outlined in Fed. R. Civ. P. 26(b)(1) and
5 26(b)(2)(C). These factors include the importance of the issues at stake, the
6 amount in controversy, the parties' relative access to information, the parties'
7 resources, and the importance of the discovery in resolving the issues.

8 Ten (10) remote depositions will be more than sufficient to permit
9 Defendants to probe the legal and factual issues at play in this Adversary
10 Proceeding. Each deposition will be largely duplicative in primarily
11 investigating the Offering Documents and Project investment decision. There
12 is simply no need for 70 separate in-person depositions when a smaller
13 number of remote depositions will adequately uncover any purported legal or
14 factual issues with Plaintiffs' claims. Moreover, Plaintiffs can and will each
15 submit sworn affidavits regarding each Plaintiff's investment decision in the
16 Project.

17 **C. Cumulative and Duplicative Discovery**

18 It is highly likely that the testimony of 70 Plaintiffs regarding the
19 Offering Documents would be largely cumulative and duplicative. See Fed. R.
20 Civ. P. 26(b)(2)(C)(i). Defendants can obtain the information necessary to

1 dispute Plaintiffs' claims through a reasonably limited number of depositions
2 targeting representative Plaintiffs or those with unique knowledge. Moreover,
3 Plaintiffs are each willing to submit written affidavits and/or declarations
4 regarding each Plaintiffs' decision to invest in the Project and, if necessary,
5 testify or submit affidavits at the trial currently scheduled in June.

6 **D. The Proposed Limit is Reasonable**

7 Limiting the total number of Plaintiff depositions to ten (10) strikes a
8 fair balance. It allows Defendants ample opportunity to explore the key facts
9 and variations among Plaintiff claims while protecting Plaintiffs from the
10 staggering and unnecessary burden and expense associated with 70
11 depositions, including 14 simultaneous depositions each day of a single week.
12 The court must limit discovery where it is "unreasonably cumulative or
13 duplicative" or where "the burden or expense of the proposed discovery
14 outweighs its likely benefit." Fed. R. Civ. P. 26(b)(2)(C). Both conditions are
15 met here.

16 **CONCLUSION**

17 For the foregoing reasons, Plaintiffs respectfully request that this Court
18 find good cause exists and enter a Protective Order substantially in the form
19 attached hereto as Exhibit 1 pursuant to Fed. R. Civ. P. 26(c) and Fed. R.
20 Bankr. P. 7026:

- 1 1. Directing that the depositions of any Plaintiff be conducted via remote,
2 simultaneous audiovisual means;
- 3 2. Limiting the total number of depositions of individual Plaintiffs in this
4 adversary proceeding to no more than ten (10); and
- 5 3. Granting such other and further relief as the Court deems just and
6 proper.

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER



600 University St, Suite 2420

Seattle, WA 98101

O: (206) 428-3250

1 DATED: April 22, 2025.

2
3 **ARETE LAW GROUP PLLC**

4 By: /s/ Jeremy E. Roller

5 Jeremy E. Roller, WSBA No. 32021

6 Lisa Herb, WSBA No. 23161

7 600 University Street, Suite 2420

8 Seattle, WA 98101

9 Phone: (206) 428-3250

10 Fax: (206) 428-3251

11 jroller@aretelaw.com

12 lherb@aretelaw.com

13
14 **REID & WISE LLC**

15 By: /s/ Matthew Sava

16 Matthew Sava (admitted *pro hac vice*)

17 Matthew Livingston (admitted *pro hac vice*)

18 Zheng Gao (admitted *pro hac vice*)

19 One Penn Plaza, Suite 2015

20 New York, NY 10119

Phone: (212) 858-9968

Fax: (516) 821-8978

msava@reidwise.com

mlivingston@reidwise.com

zgao@reidwise.com

Attorneys for Plaintiffs

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER



600 University St, Suite 2420

Seattle, WA 98101

O: (206) 428-3250

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 22nd Day of April, 2025, I electronically
3 filed the foregoing MOTION FOR PROTECTIVE ORDER with the Clerk of
4 the Court using the CM/ECF system, which will send notification of such
5 filing to all counsel of record registered for electronic service.

6
7 /s/ Matthew J. Livingston

8 Matthew J. Livingston
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PLAINTIFFS' MOTION FOR PROTECTIVE ORDER



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Seattle, WA 98101

O: (206) 428-3250

Exhibit 1

Proposed Order

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